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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

THE VIDEOTAPED DEPOSITION OF
GORDON JOHNSON, PhD, produced as a witness on
behalf of the Defendants in the above styled and
numbered cause, taken on the 4th day of February,
2008, in the City of Tulsa, County of Tulsa, State
of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

1 (Whereupon, the deposition began at
2 9:04 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Dr. Gordon Johnson. Today is
5 February 4th, 2008. The time is 9:05 a.m. Would 09:04AM
6 counsel please identify themselves for the Record?

7 MR. NANCE: Bob Nance for the State of
8 Oklahoma, being joined shortly by Trevor Hammons
9 also for the State of Oklahoma.

10 MR. BASSETT: Woody Bassett for George's, 09:04AM
11 Inc. and George's Farms, Inc.

12 MR. SANDERS: Bob Sanders for the Cal-Maine
13 defendants.

14 MR. BOND: Michael Bond for the Tyson
15 defendants. 09:04AM

16 MS. SOUTHERLAND: Leslie Southerland for
17 the Cargill defendants.

18 MR. McDANIEL: Scott McDaniel representing
19 Peterson Farms, Inc.

20 MS. GRIFFIN: Jennifer Griffin for Willow 09:05AM
21 Brook Foods on the telephone.

22 VIDEOGRAPHER: Thank you. The witness may
23 be sworn in.

24 GORDON JOHNSON, PhD,
25 having first been duly sworn to testify the truth,

1 the whole truth and nothing but the truth, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. McDANIEL:

5 Q Would you state your full name for the Record, 09:05AM
6 please, sir?

7 A Gordon Vernon Johnson.

8 MR. NANCE: Mr. McDaniel, do I understand
9 correctly that we've agreed to reserve objections
10 except to the form of the question until the time of 09:05AM
11 trial?

12 MR. McDANIEL: That's correct.

13 MR. NANCE: Thank you, sir.

14 Q All right. Mr. Johnson, you heard me
15 introduce myself. My name is Scott McDaniel, and I 09:05AM
16 represent Peterson Farms, Inc., one of the
17 defendants in the case.

18 A Yes.

19 Q Have you ever given a deposition before, Dr.
20 Johnson? 09:05AM

21 A Yes.

22 Q How many times?

23 A Oh, probably fifteen or twenty times.

24 Q Really? When was the last time?

25 A Well, I don't know when the last deposition -- 09:05AM

1 by USDA that involves USDA people, like Sharpley and
2 maybe university people, to look at phosphorus.

3 Q The paper says the National Phosphorus Project
4 is being conducted across the country to better
5 assess the relationship between soil test P and P 10:35AM
6 runoff. The general objective of the National P
7 Project is to develop P management recommendations
8 that sustain agriculture and protect water quality.
9 Do you see that statement?

10 A Yes. 10:36AM

11 Q Let's go to the bottom of the page. The
12 author states, several states have adopted a
13 multiplicative matrix and are making modifications
14 to the original P index to more accurately reflect
15 the local landscape characteristics in management 10:36AM
16 practices. As with the original P index, most P
17 indices are being developed through many discussions
18 with area scientists and representatives of state
19 and federal technical advisory and regulatory
20 agencies. Are you aware of these cooperative 10:36AM
21 efforts between universities, local scientists and
22 agencies in order to develop state standards for
23 phosphorus management?

24 A I'm aware of the interaction. I wouldn't -- I
25 don't know that the term cooperative is appropriate. 10:36AM

1 Q Have you been involved personally, sir, in any
2 aspect of the development of the phosphorus
3 management criteria that's used in the state of
4 Oklahoma that's applicable in the Illinois River
5 watershed?

10:37AM

6 A I've been involved in the discussions with
7 NRCS and with individuals from the University of
8 Arkansas to the extent that I suggested that we
9 shouldn't use the high values that have come to be
10 because we didn't have scientific evidence to
11 suggest that higher numbers should be used.

10:37AM

12 Q Let's --

13 A Those recommendations, incidentally, were not
14 accepted.

15 Q All right. So let me understand your
16 testimony. Your involvement with regard to the
17 standards that are employed in Oklahoma is you
18 offered your opinion to the Natural Resource
19 Conservation Service that the Code 590 standard
20 allowed the application of phosphorus-containing
21 fertilizers at a level higher than you felt was
22 appropriate?

10:37AM

10:38AM

23 A Yes.

24 Q And the USDA, Natural Resources Conservation
25 Service did not change their Code as a result of

10:38AM

1 your comments?

2 **A** Well, I believe at the time they were -- as
3 indicated here, each state was developing specifics
4 for their state after looking at what the federal
5 level people had sent down to them, and my input 10:38AM
6 probably, as I recall, was two-fold. One is that I
7 disagreed with the intent of having a different
8 phosphorus soil test calibration for animal waste
9 than you had for commercial fertilizer if your
10 purpose as stated on the first page of 590 was to 10:39AM
11 minimize runoff of pollutants, non-source pollutants
12 because, in fact, animal waste has a lower density
13 than commercial fertilizer and it's more subject to
14 runoff.

15 So if anything, you ought to have more 10:39AM
16 stringent requirements when you are using animal
17 waste and you ought to at least accept the same
18 guidelines that NRCS has in place for subsidizing
19 the use of commercial fertilizer when they're trying
20 to stabilize erodible areas with vegetation. 10:39AM

21 **Q** And Oklahoma has adopted the NRCS standards;
22 correct?

23 MR. NANCE: Objection, calls for a legal
24 conclusion.

25 **A** I believe so. 10:40AM

85

1 **A** I don't believe it's an environmental
2 threshold. I believe it's a waste disposal
3 threshold. I believe it's in conflict with the
4 stated purpose on the first page, that these
5 guidelines are to minimize agricultural non-point 11:08AM
6 source pollution of surface and groundwater
7 resources, and to use this table does not minimize
8 that.
9 **Q** And --
10 **A** In fact, it maximizes the amount of waste you 11:08AM
11 could dispose of without regard to the increased
12 non-point source pollution.
13 **Q** And you have -- you have expressed those
14 concerns to NRCS?
15 **A** Yes. 11:08AM
16 **Q** When was the last time you expressed your
17 concerns to them?
18 **A** It would be several years ago when I was at
19 OSU.
20 **Q** Okay. So at least four years ago then? 11:08AM
21 **A** Yes.
22 MR. McDANIEL: Before we start something
23 new, he says we have five minutes left, so let's go
24 ahead and take a break.
25 VIDEOGRAPHER: We're now off the Record, 11:08AM

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